

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653 (KRH)
. .
. . Chapter 11
. Jointly Administered
CIRCUIT CITY STORES, .
INC., et al., . 701 East Broad Street
. Richmond, VA 23219
. .
Debtors. .
. May 14, 2013
. 2:01 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Tavenner & Beran, PLC
By: LYNN S. TAVENNER, ESQ.
20 North Eighth Street, 2nd Floor
Richmond, VA 23219

For G&S Livingston LeClair Ryan
Realty, Inc.: By: CHRISTIAN K. VOGEL, ESQ.
Riverfront Plaza, East Tower
951 East Byrd Street, 8th Floor
Richmond, VA 23219

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1 COURTROOM DEPUTY: All rise. Court is now in
2 session. Please be seated and come to order.

3 COURT CLERK: Circuit City Stores, Incorporated,
4 Items 1 through 2 on proposed agenda.

5 MS. TAVENNER: Good afternoon, Your Honor. For the
6 record, Lynn Tavenner of the law firm of Tavenner & Beran
7 appearing on behalf of the trust. Together with me today at
8 counsel table is Ms. Katherine Bradshaw, the trust
9 representative.

10 THE COURT: Good afternoon, Ms. Tavenner.

11 MS. TAVENNER: Thank you. Good afternoon, sir.
12 There are only two matters on the docket today, the first of
13 which is a motion for default judgment in the adversary
14 10-03564. It's labeled Siegal against R-Pac International
15 Corp.

16 Your Honor, there's an affidavit that's been attached
17 to the motion for a default judgment of Ms. Pam Egan that goes
18 through the facts. One of the items is that the trustee did
19 dismiss the complaint against the defendant R-Pac long ago and
20 as a result this motion only goes to the defendant Minwa.

21 Also recited in the affidavit, Your Honor, is that
22 the trustee has previously submitted a request for service
23 abroad of judicial or extra-judicial documents which Your Honor
24 entered and the alias summons and complaint was served by that
25 mechanism. Ms. Egan's affidavit goes through the specifics

1 with regard to that service. We have attached to her affidavit
2 the actual information coming back from Hong Kong to show that
3 the service was effected.

4 Pursuant to that effected service, Your Honor, the
5 defendant Minwa had until March the 21st to respond to that
6 second alias summons and complaint. Minwa did not respond in
7 any shape or form. The trust has not heard from them. As a
8 result, Your Honor, we filed the existing motion for default.
9 The clerk has now entered default against Minwa and we would
10 submit to Your Honor that the case is now ripe at this point
11 for entry of a default judgment.

12 The claims against the defendant are for sum certain.
13 In the complaint, the trustee sought several things, the first
14 of which was the avoidance of a preferential transfer. That
15 was in the amount of \$201,247.70. Then, the same complaint
16 objected to Claim Number 2626 on the basis that it was
17 overstated and the trust believed that it should be reduced to
18 \$130,714.64. In addition, Your Honor, the trust objected to
19 Claim Number 417 and requested that that claim be expunged on
20 the grounds that it was duplicative of the Claim 2626.

21 Further, Your Honor, the trust would submit that if
22 Your Honor granted that relief that the trust would be owed the
23 sum certain of \$70,533.06 based upon the setting off of the
24 Claim Number 2626 against the preferential transfer. At this
25 point, then, Your Honor, we are seeking that Your Honor enter

1 default judgment in that amount.

2 THE COURT: All right. Does any party wish to be
3 heard in connection with the motion for default judgment?

4 (No audible response)

5 THE COURT: Was this one of the matters in which I
6 issued the letter rogatory?

7 MS. TAVENNER: Yes, Your Honor.

8 THE COURT: Okay, very good. The Court finds, based
9 on the affidavit, the certificate of service that was filed in
10 this case, that the bailiff of the High Court of Hong Kong did
11 serve the -- pursuant to the direction of the registrar of the
12 High Court, did serve the process in accordance with the laws
13 of Hong Kong and the Court finds that good and valid service of
14 process was effected in this case under rules for -- the
15 Federal Rules of Civil Procedures incorporated by Rule 7004 and
16 by the laws of Hong Kong. And the Court finds the time within
17 which to file responsive pleadings has now lapsed.

18 The Court finds that no responsive pleadings have
19 been filed by Minwa Electronics Company to the complaint and
20 that they are in default under the rules of court.
21 Accordingly, the Court's going to grant the motion for default
22 judgment. The Court will enter judgment by default in the
23 amount of \$70,533.06, as requested by the plaintiff and ask you
24 to submit an order to that effect.

25 MS. TAVENNER: We will do so, Your Honor. Thank you.

1 THE COURT: And then also disallowing the claim,
2 et cetera, allowing for the set off as net result.

3 MS. TAVENNER: Thank you.

4 THE COURT: All right.

5 MS. TAVENNER: The only remaining matter on the
6 docket this afternoon, Your Honor, is Item 2 which is actually
7 the motion of G&S Livingston Realty, Inc. to reconsider and
8 vacate a prior order with respect to a claim. Mr. Vogel is in
9 the courtroom who represents G&S Livingston Realty. We noted
10 in the agenda that the parties would appear today for status
11 purposes and request that the matter be set down for a
12 substantive hearing.

13 We're hopeful that we can enter into a dialogue with
14 counsel for G&S and that perhaps we can avoid the need for a
15 substantive hearing altogether. However, at this point, we do
16 request that we set it down for a substantive hearing so that
17 we have some benchmarks to move toward.

18 Mr. Vogel and my partner, Paula Beran, were in
19 correspondence prior to the hearing and we alerted him to the
20 available June dates that we have set down already for omni
21 hearings and also told him that we don't yet have July, August,
22 September dates and we are endeavoring to obtain the same. Mr.
23 Vogel was then going to get in touch with his co-counsel.

24 At this point, I don't think he has heard back from
25 his co-counsel, but we would respectfully request, jointly,

1 that we set it down for June 6th, and then if that does not
2 prove to be a good date for his counsel, we would advise the
3 Court.

4 THE COURT: All right, very good. Mr. Vogel?

5 MR. VOGEL: Good afternoon, Your Honor. Kirk Vogel
6 here on behalf of G&S Livingston Realty.

7 We're hopeful that we can resolve this without a
8 hearing, but to the extent necessary if we could set June 6th
9 and --

10 THE COURT: Yes. This wasn't an excusable neglect
11 situation. This was a failure to receive adequate notice
12 because you're alleging that the notice was sent to the wrong
13 place and --

14 MR. VOGEL: That's accurate, I think. They've had
15 issues apparently with receiving mail in the past and I think
16 that we would provide evidence on that in that they -- my
17 client's position is that they didn't receive the motion or the
18 order that was entered and they only found out about the
19 expungement of their claim through a claim purchaser that had
20 contacted them previously that they reached back out to. So
21 yes, sir, that's it. That's, I believe, what the evidence that
22 we would provide would show.

23 THE COURT: All right, very good. And so we want to
24 set this down for a substantive hearing, and I wouldn't expect
25 that it would take too long to hear that issue, if you aren't

1 able to figure it out amongst yourselves. So why don't we go
2 ahead and set it for June 6th, then. Have you -- you say you
3 haven't heard from your folk, but you'd be available on June
4 6th, right?

5 MR. VOGEL: I'm available, yes, sir, and I was --

6 THE COURT: And you are certainly capable of arguing
7 this motion.

8 MR. VOGEL: I'm capable of arguing the motion. The
9 one piece that I was missing that I was hoping to confirm
10 before the hearing is whether or not my client could be here to
11 provide any evidence that we thought may be helpful for the
12 Court to hear.

13 THE COURT: All right, very good. If the client
14 can't, you could always do an ex parte deposition -- or a
15 de bene esse, rather, deposition or something of that sort to
16 get the testimony that way, right?

17 MR. VOGEL: Yes, sir. I think that we could work
18 through those procedures, hopefully, yes, sir.

19 THE COURT: I'm confident that you'd be able to. All
20 right. Well, we'll set it down for the two o'clock omni
21 hearing on June 6, and then hopefully the two of you can talk
22 between now and then and get everything worked out.

23 MR. VOGEL: Thank you.

24 MS. TAVENNER: Thank you, Your Honor.

25 THE COURT: Okay.

1 MS. TAVENNER: That concludes the matters on the
2 docket for today.

3 THE COURT: All right. Is there any other business
4 we need to take up in Circuit City then?

5 MS. TAVENNER: No, Your Honor.

6 THE COURT: All right. Well, I thank you and I will
7 look forward to seeing you on the 6th.

8 MS. TAVENNER: Thank you.

9 THE COURT: Thank you, Ms. Bradshaw.

10 COURTROOM DEPUTY: All rise. The court is now
11 adjourned.

12 * * * * *

13 C E R T I F I C A T I O N

14 I, STEPHANIE SCHMITTER, court approved transcriber,
15 certify that the foregoing is a correct transcript from the
16 official electronic sound recording of the proceedings in the
17 above-entitled matter, and to the best of my ability.

18
19 /s/ Stephanie Schmitter

20 STEPHANIE SCHMITTER

21 J&J COURT TRANSCRIBERS, INC.

DATE: May 24, 2013

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